

Respondent seeks review of the Administrative Law Judge's award for benefits, other than medical compensation, on the basis of K.S.A. 44-501(c), contending claimant failed to prove he was disabled for a period of at least one week from earning full wages at his employment. In the event disability benefits are granted, respondent also requests that the Appeals Board review the ALJ's findings concerning the nature and extent of claimant's disability.

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record, the Appeals Board finds as follows:

The ALJ found claimant was entitled to disability benefits for the work-related injury he received to his upper extremities on March 8, 1996. The Appeals Board finds the ALJ's Award should be affirmed. Furthermore, the Appeals Board agrees with the analysis of the evidence and law as set forth in the Award and adopts the ALJ's findings and conclusions as its own.

Claimant continued to work for respondent immediately after the accident and did not miss one consecutive week from work. The Appeals Board notes claimant later received restrictions that recommended he modify his work duties, but the record does not disclose whether respondent accommodated claimant's injury or the restrictions given him as a result of the March 8, 1996, accident.

Nevertheless, claimant received ongoing medical care and was required to participate in physical therapy. Claimant missed work due to his injury for medical treatment. In addition, the ALJ found claimant missed a half day of work for physical therapy two or three times a week for approximately a month. Claimant also missed the opportunity for overtime work during this period.

The Appeals Board finds this does constitute one week as required by K.S.A. 44-501(c) and claimant is entitled to receive permanent partial disability benefits because the "period of at least one week" referred to in K.S.A. 44-501(c) can be an aggregate and need not be consecutive full days. At the time of claimant's injury, the statute provided in pertinent part:

Except for liability for medical compensation, as provided for in K.S.A. 44-510 and amendments thereto, the employer shall not be liable under the workers compensation act in respect of any injury which does not disable the employee for a period of at least one week from earning full wages at the work at which the employee is employed.

In Boucher v. Peerless Products, Inc., 21 Kan. 977, 911 P.2d 198, *rev. denied* 260 Kan. 991 (1996), the court found K.S.A. 44-501(c) to be plain and unambiguous that compensation to an injured employee is limited to medical expenses if the employee is not disabled for at least one week from earning full wages at the work for which he or she is employed.

Subsequent to claimant's injuries, K.S.A. 44-501(c) was amended to delete the above-quoted section. K.S.A. 1996 Supp. 44-501(c). This amendment provided that it was to be applied to injuries that occurred prior to April 4, 1996, the effective date of the amendment, unless the claim had been fully adjudicated. K.S.A. 1996 Supp. 44-501a.

In Osborn v. Electric Corp. of Kansas City, 23 Kan. App. 2d 868, 936 P.2d 297, *rev. denied* 262 Kan. 297 (1997), a case involving the retroactive application of the amended section of K.S.A. 44-501(c), the Court of Appeals held, *inter alia*: "In workers compensation cases, the law in effect at the time of the injury governs the rights and obligations of the parties." 23 Kan. App. 2d 868, Syl. ¶ 8. Thus, the 1996 amendment to K.S.A. 44-501(c) had prospective application only and did not apply to this claimant's claim for compensation.

Respondent argues that because K.S.A. 44-501(c) applies to this claim, claimant is only entitled to his medical expenses. The Appeals Board disagrees. The Appeals Board concludes that claimant is entitled to the aggregate of the time he was off work due to his injury. In doing so, claimant clearly missed in excess of one week of work. Missing work for medical treatment related to the accident is equivalent to being disabled from earning wages. Even though claimant was paid his straight time, this is not the same as earning wages.¹ Furthermore, claimant was not compensated for the loss of overtime work.

AWARD

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the Award entered by Administrative Law Judge Julie A. N. Sample dated April 17, 1998, should be, and is hereby, affirmed.

IT IS SO ORDERED.

Dated this ____ day of May 1999.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: James E. Martin, Overland Park, KS
Gary R. Terrill, Overland Park, KS
Julie A. N. Sample, Administrative Law Judge
Philip S. Harness, Director

¹ See Bohanan v. U.S.D. No. 260, 24 Kan. App. 2d 362, 947 P.2d 440 (1997).